

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

PATRICK KINNEY,

Petitioner,

Case No. 2:10-cv-146

v.

Honorable R. Allan Edgar

CATHERINE B. BAUMAN,

Respondent.

ORDER ADOPTING AND APPROVING
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

On April 25, 2013, U.S. Magistrate Judge Greeley entered a Report and Recommendation ("R&R") recommending that Petitioner's habeas petition be dismissed with prejudice. Doc. No. 39. Petitioner has filed objections to the R&R. Doc. No. 40. This Court is required to make a de novo determination of those portions of the R&R to which objections have been filed, and may accept, reject, or modify any or all of the Magistrate Judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

In his objections, Petitioner asserts that AEDPA deference does not apply. He further argues that Magistrate Judge Greeley failed to address whether the state court's decision involved an unreasonable determination of the facts and whether the ruling was contrary to or an unreasonable application of Supreme Court precedent. Finally, Petitioner asserts that Magistrate Judge Greeley erred in finding some evidence to support the misconduct finding. Petitioner's objections are without merit. Magistrate Judge Greeley correctly found that the misconduct hearing did not violate Petitioner's constitutional due

process rights. Petitioner received the appropriate procedural protections and there was some evidence to support the hearing officer's decision. Magistrate Judge Greeley correctly found that the state court adjudications rejecting Petitioner's claims did not result in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law as determined by the Supreme Court of the United States; or result in a decision that was based upon an unreasonable determination of the facts in light of the evidence presented at the state court proceeding.

Petitioner's objections to the R&R [Doc. No. 40] are DENIED. Magistrate Judge Greeley's R&R [Doc. No. 39] is APPROVED and ADOPTED as the opinion of the Court pursuant to 28 U.S.C. § 636(b)(1) and W.D. Mich. L. Civ. R. 72.3(b). The petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2254 is DENIED and DISMISSED WITH PREJUDICE.

If Petitioner files a notice of appeal, it will be treated as an application for a certificate of appealability which shall be DENIED pursuant to 28 U.S.C. § 2253(c)(2); Fed. R. App. P. 22(b)(1); and *Slack*, 529 U.S. at 484. Reasonable jurists could not find that this decision to dismiss Petitioner's claims is debatable or wrong.

A Judgment consistent with this Memorandum and Order will be entered.

SO ORDERED.

Dated: 9/23/2013

/s/ R. Allan Edgar
R. Allan Edgar
United States District Judge